IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE NO.1007 OF 2004
IN
SUIT NO.3432 OF 1987

Mr.Moolchand Kaluchand Ranka & Co. ...Plaintiffs
Vs.
Mr. Manohar Vithal Telang & Ors. ...Defendants

Mr.Simil Purohit with Ms. Bhanushali i/b. M/s. Kishor Thakore & Co. for Plaintiffs

Mr.Joseph David i/b. David & Associates for Defendants

COMRAM: S.J. VAZIFDAR, J.
DATE: 2ND SEPTEMBER, 2004

P.C.

1. This application under Order 21 Rule 32 of the C.P.C. is not only unsustainable but dishonest. It is made without disclosing the correct facts.

2. An order in terms of the consent terms was passed on 28th April, 1988. The application is taken out sixteen years later for enforcement of clause (6) of the Consent Terms. (The Notice under Order 21 Rule 22 was however made absolute). Clause 6 of the Consent Terms reads as under :-

> (6) Agreed, declared and confirmed that in respect of the flat of 600 sq. ft (built-up) (express built-up shall mean include proportionate areas of balcony, staircase common passage and lift well) to be provided as aforesaid, the Plaintiffs have

entered into with the Defendant NO.1 and 3 necessary Agreement and the same shall be provided to the Defendant NO.1 and 3 and the said Samir Manohar Telang within a period of 24 months from the date hereof. Agreed and ordered that the Defendant No.1 and 3 as also their family members do undertake to this Honourable Court to vacate within one week of the Plaintiffs calling upon them, the ground floor flat in the existing building on the said property and shift to the temporary accommodation to enable Plaintiffs to demolish existing building.

3. Initially I was of the opinion that the application ought to be granted. However, Mr. David, the learned Counsel appearing on behalf of Defendant no.1, pointed out that the application is not even maintainable. He produced the agreement dated 28th April, 1988 which is referred to in clause (6). Clauses (1) and (2) of the agreement dated 28th April, 1988 read as under :-

" (1) The Flat acquirers agree to shift and vacate from the accommodation being a flat in the existing building on the said property temporarily for the period the existing building is demolished and new building is constructed and permanent alternative

accommodation being the flat of 600 sq. ft. (built up) is provided by the Builders.

(2) The said temporary accommodation is agreed to be provided by the Builder at their own costs. The Builder proposes to construct a temporary structure on the said property for the flat acquires. However if the flat acquirers do not approve of the said temporary accommodation then the Builder shall at their costs provide an alternative accommodation to the flat acquirers in the same vicinity of the said property. The temporary accommodation to be provided in the same vicinity may be a premises or flat of an area of 250 sq. ft. (built up)."

4. It is this agreement that is referred to in clause (6). This fact is not even disputed by the learned Counsel appearing on behalf of the plaintiff.

5. It is however submitted on behalf of the Plaintiff that clause (6) of the consent terms must be read strictly and so read it casts no obligation on the part of the plaintiff to provide temporary alternate accommodation. The submission is un-founded. The words "and the same" shall be provided to Defendant Nos.1 and 3 indicates the alternate accommodation referred to in the agreement

dated 28th April, 1988 referred to above. This is further clear from the fact that in the last sentence it is provided that the defendants shall shift to "the temporary accommodation". The submission of the learned Counsel for the plaintiff that the Plaintiffs are not under any obligation to provide temporary alternative accommodation under the consent terms is not correct to say the least. The submission shows an absence of readiness and willingness on the part of the plaintiff in complying with the decree of specific performance.

6. In the circumstances it is held that the plaintiffs have failed and neglected to comply with their obligations under the consent terms.

7. The application is dismissed. The Plaintiffs shall pay the costs of the application fixed at Rs.5000/- to the defendants within four weeks from today.

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